will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act. If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, and such other matters as justice may require.

(c) *Referral of recommended decision and order.* The ALJ shall immediately issue and serve the recommended decision (and order, if appropriate) to the Office of Chief Counsel, at the address in § 785.6(b) of the APR, and to the respondent, by courier delivery or overnight mail. The recommended decision and order will also be referred to the head of the designated executive agency for final decision and order.

(d) *Final decision and order.* The recommended decision and order shall become the final agency decision and order unless, within 60 calendar days, the Secretary of Commerce, or a designated United States Government official, modifies or vacates it, or unless an appeal has been filed pursuant to paragraph (e) of this section.

(e) *Appeals.* The respondent may appeal the final agency decision within 30 calendar days after the date of certification. Petitions for appeal may be filed in the Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the district in which the violation occurred.

§ 785.17 Settlement.

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case prior to

issuance of a NOVA, a settlement proposal consisting of a settlement agreement and order will be submitted to the Assistant Secretary for Export Enforcement for approval and signature. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed as though no settlement proposal has been made. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and no action will be required by the ALJ.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Assistant Secretary for Export Enforcement, forwarding a proposed settlement agreement and order, which the Assistant Secretary will approve and sign. If a NOVA has been filed, the Office of Chief Counsel will send a copy of the settlement proposal to the ALJ.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this Part. The government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed, absent a showing of good cause. Appeals and requests to reopen settled cases must be submitted to the Assistant Secretary for Export Enforcement within 30 calendar days of the execution of a settlement agreement.